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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,999	05/25/2006	Amir Genosar	5114-00006	1031
26753 7590 02/25/2009 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202				
EXAMINER TYLER, STEPHANIE E				
ART UNIT 3754		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/549,999

**Applicant(s)**

GENOSAR, AMIR

**Examiner**

STEPHANIE E. TYLER

**Art Unit**

3754

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 3, 11, 12 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, 13, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 9/20/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- I. Figures 1a-3,5a-7
- II. Figure 4
- III. Figures 8a-8c,10
- IV. Figures 9a-9d,11a

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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2. The claims are deemed to correspond to the species listed above in the following manner:

Claims 1,2,4-10,13,17,18 to Species I

Claims 3,11,12,14-16 to Species II,III, or IV

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: because the other species (liquid dispensing packages) can be used for intricate medical and chemical packages.

4. During a telephone conversation with Mr. Thomas Wonzy Reg. No. 28,922 on February 9, 2009 a provisional election was made without traverse to prosecute the invention of Species I, claims 1,2,4-10,13,17,18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3,11,12,14-16 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "spray nozzle" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is

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being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S.

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patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1,2,4,5,7-10,13,17,18 are rejected under 35 U.S.C. 102(e) as being anticipated by Abergel et al. (WO02/16047).

The Abergel et al. reference discloses a liquid dispensing package consisting of a flexible film package (1,11,12,14) formed with at least two spaced apart flexible major surfaces joined to each other along their peripheral edges and delimiting therebetween a liquid containing chamber (1), the package further comprising an integral dosing pump (3) and at least one button (34) to operate the pump (3), the at least one button (34) being provided adjacent to an edge of the package, wherein the button (34) is a section of the flexible film (11,14) from which the package is formed and wherein the pump consists of, a) a pumping chamber (31) in which the button constitutes a side wall of the chamber, b) an inlet valve (32) through which the uptake of the liquid contents from the liquid containing chamber is performed, and c) an outlet valve (33) through which the contents of the pumping chamber (31) are dispensed.

Re: Claim 2 wherein the button (34) is a formed section of the package (11,14), where the forming is accomplished by thermoforming or embossing (pg. 3, lines 26-30); such that a cavity is created, and the cavity constituting a pumping chamber (31).

Re: Claim 4 wherein return of the button (34) to its initial position transfers the liquid from the uptake conduit (see fig.2, 22) to the pumping chamber (31) which in turn sucks a further dose of the liquid from the liquid containing chamber (1) into the uptake conduit (see fig.2,22).

Re: Claim 5 wherein the dispenser further comprises a nozzle (see fig.2, 20) in fluid communication with the outlet valve (33).

Re: Claim 7 wherein the nozzle (see fig.2,20) is a spray nozzle (see fig.2,20; just as much as shown in applicant's elected figures).

Re: Claim 8 wherein the nozzle (see fig.2,20) can be swiveled to extend away from the dispenser.

Re: Claim 9 wherein the frame (2,24,26,27; pg.7, lines 29-31) of the pumping chamber is an injection-molded plastic part.

Re: Claim 10 wherein at least part of the valves (32,33) are an integral component of the injection-molded plastic part (2,24,26,27; pg.7, lines 29-31).

Re: Claim 13 wherein the liquid is selected from the group consisting of a perfume, an eau de toilet, a breath freshener, a shampoo, a liquid soap, a shaving gel, a hair conditioner, a comestible substance, snuff, an inhalable medicine, an oil, water-based paint, oil-based paint or shoe polish (pg.1, lines 6,7).

Re: Claim 17 the liquid dispensing package (figs.1-3), wherein its configuration is selected from the group consisting of a stand up pouch, a flat pouch and a sachet.

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Re: Claim 18 wherein the liquid dispensing package (figs.1-3) further incorporating an isolated compartment (31,35,37; 32&33 when closed) for storage of at least one related item.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abergel et al. (WO02/16047) in view Marbler et al. (6,293,394).

The Abergel et al. reference discloses substantially all the structure and functionality of the invention. However the Abergel et al. reference lacks a tamper-indication tab formed as part of the flexible package, where, the removal of the tab exposes the nozzle.

The Marbler et al. reference teaches a flexible package/pouch (10) with a drinking straw/nozzle (38,42) sealed therein by a tamper-indication tab (50,52) formed as part of the flexible package/pouch (10) for the purpose of removing a portion of the flexible package/pouch "to have access to the drinking-straw tube" (col.2, lines 55,56).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to reasonably modify the flexible package of Abergel



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et al. with a tamper-indication tab as taught by Marbler et al. in order to provide a cost-effective way to determine whether or not the nozzle/drinking straw has been used; and to access the nozzle/drinking straw to dispense liquid contents from the flexible package/pouch.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gueret (5,413,250; 5,492,252; 5,271,432; 5,505,341), Wiegner et al. (6,406,207), Abergel et al. (6,789,706), and Lipman (2,814,419) are other various types of liquid dispensing packages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754